

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-232V

Filed: August 8, 2016

UNPUBLISHED

MELISSA WAGNER,

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Petitioner,

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v.

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SECRETARY OF HEALTH

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AND HUMAN SERVICES,

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Respondent.

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Mark L. Krueger, Krueger & Hernandez, S.C., Baraboo, WI, for petitioner.

Justine Elizabeth Walters, U.S. Department of Justice, Washington, DC, for respondent.

RULING ON ENTITLEMENT¹

Dorsey, Chief Special Master:

On February 17, 2016, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the "Vaccine Act"). Petitioner alleges that she suffered left shoulder synovitis and adhesive capsulitis that was caused-in-fact by her October 16, 2014 influenza ("flu") vaccination. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On August 5, 2016, respondent filed her Rule 4(c) report in which she concedes that petitioner is entitled to compensation in this case. Respondent's Rule 4(c) Report at 1. Specifically, respondent

has concluded that a preponderance of the evidence establishes that petitioner's injury is consistent with a shoulder injury related to vaccine

¹ Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

administration (“SIRVA”), and that petitioner’s injury is not due to factors unrelated to her October 16, 2014, flu vaccination. Thus, in light of the information contained in petitioner’s medical records, respondent has concluded that petitioner’s left shoulder injury is compensable as a “caused-in-fact” injury under the Act.

Id. at 3. Respondent further agrees that the claim was timely filed, involves a vaccine covered by the Vaccine Injury Table, and that petitioner received her vaccination in the United States and suffered from her injury for more than six months. *Id.* Additionally, petitioner avers that she “has not received compensation in the form of an award or settlement for her vaccine-related injuries, nor has Petitioner filed a civil action for her injuries prior to this filing.” Petition at ¶13.

In view of respondent’s concession and the evidence before me, the undersigned finds that petitioner is entitled to compensation.

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master